



[4910-EX-P]

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2020-0005]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from eight individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions will enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Comments must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA-2020-0005 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/docket?D=FMCSA-2020-0005>. Follow the online instructions for submitting comments.
- Mail: Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- Fax: (202) 493-2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation” portion of the SUPPLEMENTARY INFORMATION section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE, Room W64-224, Washington, DC 20590-0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA-2020-0005), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to

<http://www.regulations.gov/docket?D=FMCSA-2020-0005>. Click on the “Comment Now!”

button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to <http://www.regulations.gov/docket?D=FMCSA-2020-0005> and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.transportation.gov/privacy.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The eight individuals listed in this notice have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding vision found in §391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

On July 16, 1992, the Agency first published the criteria for the Vision Waiver Program, which listed the conditions and reporting standards that CMV drivers approved for participation would need to meet (57 FR 31458). The current Vision Exemption Program was established in 1998, following the enactment of amendments to the statutes governing exemptions made by § 4007 of the Transportation Equity Act for the 21st Century (TEA-21),

Public Law 105-178, 112 Stat. 107, 401 (June 9, 1998). Vision exemptions are considered under the procedures established in 49 CFR part 381 subpart C, on a case-by-case basis upon application by CMV drivers who do not meet the vision standards of § 391.41(b)(10).

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely in intrastate commerce with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at <https://www.regulations.gov/docket?D=FMCSA-1998-3637>.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrated the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively.¹ The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary

¹ A thorough discussion of this issue may be found in a FHWA final rule published in the *Federal Register* on March 26, 1996 and available on the internet at <https://www.govinfo.gov/content/pkg/FR-1996-03-26/pdf/96-7226.pdf>.

only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors – such as age, sex, geographic location, mileage driven and conviction history – are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., “Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,” Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

III. Qualifications of Applicants

Lance D. Duffie

Mr. Duffie, 44, has retinal scarring in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is light perception only, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, “In my opinion, Lance's vision is as stable OU as ever, and should be perfectly adequate for commercial driving.” Mr. Duffie reported that he has driven straight trucks for 4 years, accumulating 16,000 miles, and tractor-trailer combinations for 4 years, accumulating 450,000 miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Lester Johnson

Mr. Johnson, 42, has macular scarring in his right eye due to a traumatic incident in 1998. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, "In my opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Johnson reported that he has driven straight trucks for 8 years, accumulating 260,000 miles. He holds a Class B CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James M. Kivett

Mr. Kivett, 65, has a macular scar in his right eye due to a traumatic incident in 2010. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, "In my professional opinion, Mr. Kivett does have adequate vision to perform the driving tasks required to operate a commercial vehicle." Mr. Kivett reported that he has driven straight trucks for 20 years, accumulating 500,000 miles, and tractor-trailer combinations for 22 years, accumulating 3.3 million miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows one crash, which he was not cited for, and no convictions for moving violations in a CMV.

Charles E. Klock

Mr. Klock, 74, has had complete loss of vision in his left eye since 2016. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2019, his optometrist stated, "Based on these clinical findings, Mr. Klock has the appropriate means to operate a commercial motor vehicle in interstate commerce without glasses or low vision aides, and with no restrictions." Mr. Klock reported that he has driven tractor-trailer combinations for 10 years, accumulating 1.2 million miles, and buses for 41

years, accumulating 4.1 million miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Clayton D. Lowther

Mr. Lowther, 35, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, "It is my opinion that Clayton's vision is sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Lowther reported that he has driven straight trucks for 15 years, accumulating 600,000 miles, and tractor-trailer combinations for 15 years, accumulating 112,500 miles. He holds a Class B CDL from Wyoming. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jared G. New

Mr. New, 24, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, "Pt [sic] has sufficient vision both centrally and peripherally to operate a commercial vehicle." Mr. New reported that he has driven straight trucks for 5 years, accumulating 200,000 miles. He holds an operator's license from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David Perea

Mr. Perea, 57, has had central serous retinopathy in his left eye since 2007. The visual acuity in his right eye is 20/20, and in his left eye, 20/150. Following an examination in 2019, his optometrist stated, "In my medical opinion, he has sufficient vision to operate a

commercial vehicle.” Mr. Perea reported that he has driven straight trucks for 31 years, accumulating 1.1 million miles, and tractor-trailer combinations for 31 years, accumulating 1.1 million miles. He holds an operator’s license from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Juan Santay-Ajanel

Mr. Santay-Ajanel, 45, has retinal scarring in his right eye due to an infection in childhood. The visual acuity in his right eye is 20/80, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, “Pt [sic] can distinguish between red, green and amber colors and in my opinion has sufficient vision to operate a commercial vehicle.”

Mr. Santay-Ajanel reported that he has driven straight trucks for 2 years, accumulating 40,000 miles, and tractor-trailer combinations for 16 years, accumulating 800,000 miles. He holds a Class CA CDL from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments and material received before the close of business on the closing date indicated under the DATES section of the notice.

Issued on: January 30, 2020.

Larry W. Minor,
Associate Administrator for Policy.

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